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Order 2002-3-18

Served: March 20, 2002



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 20th day of March, 2002

In the matter of

**AIR JAPAN CO., LTD.
AIR NIPPON CO., LTD.
ALL NIPPON AIRWAYS CO., LTD.
JALWAYS CO., LTD.
JAPAN AIR SYSTEM COMPANY, LTD.
JAPAN AIRLINES COMPANY, LTD.
JAPAN ASIA AIRWAYS CO., LTD.
NIPPON CARGO AIRLINES COMPANY, LTD.**

Docket OST-2002-11890 - /

ORDER TO FILE SCHEDULES

Summary

In this order we are imposing Phase 1 schedule filing requirements under 14 CFR Part 213 of the Department's regulations to cover the all-cargo services of the named foreign air carriers of Japan. The named Japanese carriers would thus be required to file their U.S. all-cargo schedules of service so that we may determine whether the operation of such services, or any part thereof, may be contrary to applicable law or adversely affect the public interest. We are taking this action in response to the Government of Japan's action which denies Federal Express Corporation (FedEx) the ability to operate certain bilaterally-agreed services.

Background

In January 1998, the U.S. and Japan reached a landmark aviation agreement that greatly expanded the opportunities for new services.¹ It was recognized by both sides during the

¹ The 1998 Memorandum of Understanding (1998 MOU) provides for, among other things, combination and all-cargo services by incumbent and non-incumbent carriers of both sides. For Japan, the incumbent carriers are JAL (combination and all-cargo), All Nippon Airways (combination) and Nippon Cargo Airlines (all-cargo). By Order 98-4-17, we issued the three

negotiations leading up to the 1998 agreement that given the scarcity of available landing and takeoff slots at Narita airport in Tokyo, an agreement would have little real value unless a solution could be found that would enable the implementation of new Tokyo routes. The solution, recognized by both parties, was the transfer of slots from FedEx to several nonincumbent carriers, including Delta.² The transfers were fully in accord with Japan's practice, at that time and since, to permit transfers between carriers of the same nationality, consistent with IATA Guidelines.

On January 23, 2002, we were notified by FedEx that Delta would be transferring to FedEx fourteen Narita slots as of April 24, later revised to March 31, 2002. FedEx requested that we communicate our approval of the planned slot transfer to Japanese authorities. Since it was the carrier's understanding that such a communication was required by Japan and would facilitate the transfer, on February 13 we notified the Ministry of Land, Infrastructure and Transport (MLIT) of the carriers' planned transfer of slots.

On February 25, 2002, we received a letter from the MLIT stating that the Ministry would not approve any operation of FedEx based on the planned slot transfer from Delta, and that the slots in question "are placed in the slot pool for reallocation." MLIT suggested that the U.S. share of slots at Narita was too large and that FedEx had abused slot usage procedures in a manner intended to avoid the application of the use-or-lose rules.

By letter dated March 11, 2002, the Department's Deputy Assistant Secretary for Aviation and International Affairs notified the JCAB's Deputy Director-General of FedEx's intention to employ all of its Narita slots as of March 31, 2002, including the fourteen slots to be transferred from Delta, with the operation of wide-bodied aircraft as part of its regular service. The letter stated that the transfer of Delta slots to FedEx is "fully in accord with the IATA guidelines and local rules pertaining to the transfer of slots" and the 1998 MOU. The letter rejected the suggestion that the U.S. share of Narita slots, or FedEx's handling of its slots, provided a basis for not permitting the transfer. Finally, the letter further stated that if Japan were to block the slot transfer, it would not only be inconsistent with the IATA guidelines, "it would be tantamount to blocking a designated U.S. carrier from exercising rights it has under the U.S.-Japan aviation bilateral, a matter of serious concern to the United States."

incumbent Japanese carriers foreign air carrier permits consistent with the provisions of the 1998 MOU. For the United States, the incumbent carriers are United Air Lines (combination and all-cargo), Northwest Airlines (combination and all-cargo) and FedEx (all-cargo).

² The non-incumbent U.S. combination carriers are American Airlines (American), Continental Airlines/Continental Micronesia Airlines/Air Micronesia (Continental), and Delta Air Lines (Delta). The non-incumbent cargo carriers are United Parcel Service and Polar Air Cargo. The Japanese non-incumbent carriers are Air Japan Co., Ltd.; Air Nippon Co., Ltd.; Harlequin Air Corporation; JALways Co., Ltd.; Japan Air System Company, Ltd.; and Japan Asia Airways Co., Ltd.

On March 19, 2002, the Department's Deputy Assistant Secretary for Aviation and International Affairs met with the Deputy Director-General, Civil Aviation Bureau, MLIT, to discuss further the planned transfer of slots. The MLIT official reiterated the intention of the MLIT to put the slots at issue into the pool for reallocation to other carriers. Both sides reiterated their views on this matter and the issue remained unresolved. The Departmental official indicated that failure of Japan to permit the transfer of the slots at issue would be viewed as a serious matter and could result in actions being taken against Japanese carriers.

Decision

We have carefully considered the arguments given by the MLIT to justify its failure to permit the planned transfer of slots from Delta to FedEx and believe that the planned slot transfer in this instance, as in the cases in 1998 referred to above, is fully in accord with the IATA Guidelines, local rules that pertain to the transfer of slots and the 1998 Agreement.

Based on the facts before us, we find that this situation requires the imposition of the schedule filing requirements of Part 213 for the all-cargo services of the named carriers of Japan. The Government of Japan, by its refusal, over the objections of the U.S. Government, to allow the transfer of slots from Delta to FedEx, has taken action which effectively denies FedEx the ability to exercise the operating rights set forth in the 1998 agreement.

We conclude that, under these circumstances, the public interest requires that the named carriers of Japan file their all-cargo schedules of service, so that we may determine whether the operation of such services, or any part thereof, may be contrary to applicable law or adversely affect the public interest.

ACCORDINGLY,

1. Air Japan Co., Ltd.; Air Nippon Co., Ltd.; All Nippon Airways Co., Ltd.; JALways Co., Ltd.; Japan Air System Company, Ltd.; Japan Airlines Company, Ltd.; Japan Asia Airways Co., Ltd.; and Nippon Cargo Airlines Company, Ltd. shall file with the Director, Office of International Aviation (X-40), by March 22, 2002, an original and three copies of any and all of its existing all-cargo schedules of service, including extra sections, between any point or points in the United States and any point or points not in the United States, which shall include:

- (a) the type of equipment used or to be used,
- (b) the frequency and day(s) of operations of each flight,
- (c) the specific airport served at each point, and
- (d) the time of arrival and departure at each point.

2. Air Japan Co., Ltd.; Air Nippon Co., Ltd.; All Nippon Airways Co., Ltd.; JALways Co., Ltd.; Japan Air System Company, Ltd.; Japan Airlines Company, Ltd.; Japan Asia Airways Co., Ltd.; and Nippon Cargo Airlines Company, Ltd. shall file with the Director, Office of International Aviation (X-40), an original and three copies of any and all of their proposed all-cargo schedules of service between any point or points in the United States and any point or points not in the United States, including the information noted in ordering paragraph 1 above, the proposed effective date of such schedules, and the proposed termination date of such schedules (if known), at least 30 days prior to inauguration of service;

3. We may amend, modify or revoke this order at any time without hearing; and

4. We shall serve a copy of this order on Air Japan Co., Ltd.; Air Nippon Co., Ltd.; All Nippon Airways Co., Ltd.; JALways Co., Ltd.; Japan Air System Company, Ltd.; Japan Airlines Company, Ltd.; Japan Asia Airways Co., Ltd.; Nippon Cargo Airlines Company, Ltd.; Federal Express Corporation; United Air Lines, Inc.; Northwest Airlines, Inc.; American Airlines, Inc.; Continental Airlines, Inc.; Continental Micronesia, Inc.; Delta Air Lines, Inc.; United Parcel Service Co.; Polar Air Cargo, Inc.; the Embassy of Japan in Washington, D.C.; the Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (San Francisco IFO).

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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